

Office of Chief Counsel  
Internal Revenue Service  
**memorandum**

CC:LM:MCT:CLE:PIT:TL-N-603-01  
DPLeone

date: June 1, 2001

to: Jerry Fischer, Case Manager

from: Associate Area Counsel, LM:MCT:CLE:PIT

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subject: [REDACTED] - Partnership Statutes - Follow-up questions  
Years: [REDACTED] and [REDACTED]

This is in response to your April 27, 2001 request for advice with respect to the extension of the statute of limitations for certain partnerships. This memorandum is subject to 10-day post review by our National Office and, therefore, is subject to modification. The advice is based upon the facts set forth in our previous memorandum dated February 13, 2001.

ISSUES

1. If there is a properly executed Form 872-P, Consent to Extend the Time to Assess Tax Attributable to Items of a Partnership, and the partnership does not fall under the small partnership exception, then does the audit team still need to secure Forms 872-I, Investor Level Consent to Extend the Time to Assess Tax and Tax Attributable to Items of a Partnership (or Forms 871-IA, Investor Level Special Consent to Extend the Time to Assess Tax and Tax Attributable to Items of a Partnership) from each partner in order to extend the statute of limitations for TEFRA adjustments?

2. Why is a Form 872-I or Form 872-IA, or a Form 872 with language similar to that contained on the Form 871-I, necessary to extend the statute of limitations in order to permit the partners to make the small partnership election under I.R.C. § 6231(a)(1)(B)(ii)? If the partners are not in a TEFRA partnership until the election is made, how can the individual partners sign extensions designed to specifically extend the statute under I.R.C. § 6229(b)?

3. Can the Internal Revenue Service rely on a consent that does not have the complete extension language included on the recently promulgated Form 872-I, but merely includes on the executed Form 872 the following phrase: "With respect to the period described in Section 6229(a) of the Internal Revenue Code,

this agreement applies to any tax attributable to partnership items."

### ANSWERS

1. No. If a partnership is under TEFRA, a Form 872-P, properly executed by the tax matters partner, is sufficient to keep the statute open as to all partners. I.R.C. § 6229(b)(1)(B). However, in the future, we recommend using a Form 872-I instead of a Form 872 in all audits of U.S. corporations. The utility of the Form 872-I is that, when a U.S. corporation is under audit, it will protect and keep open the statute of limitations for adjustments for partnerships that are both known and unknown when the Form 872-I is being solicited.<sup>1</sup>

2. The Form 872-I should be recognized, first and foremost, as an agreement to extend the statute of limitations as provided under I.R.C. § 6501(c)(4), in other words, an agreement to extend the period for assessing the individual partner's tax liabilities. The Form 872-I simply contains additional language designed to meet the requirements of section 6229(b)(3) to keep the statute open for partnership items. Although there is no TMP to extend the section 6229 period before an election is made to be under TEFRA, and the partnership cannot extend the section 6229 period before an election is made, the individual partners can extend their own individual section 6501 limitations periods long enough to keep the statute open with respect to partnership matters.

3. The language used in Form 872-I specifically tracks all of the types of liabilities to which section 6229(a) applies.<sup>2</sup>

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<sup>1</sup> We have reviewed the revised Form 872-I language forwarded to you on behalf of [REDACTED]. The language contains the Form 872-I language, but includes references that limited the extension to only partnership items, affected items, etc., but only as such items relate to the taxpayer's interest in [REDACTED]. The language is acceptable, but it will not keep the statute of limitations open for any TEFRA partnership, known or unknown, other than [REDACTED].

<sup>2</sup> The language in the Form 872-I follows: "Without otherwise limiting the applicability of this agreement, this agreement also extends the period of limitations for assessing any tax (including additions to tax and interest) attributable to any partnership items (see section 6231(a)(3)), affected items (see section 6231(a)(5)), computational adjustments (see section 6231(a)(6)), and partnership items converted to nonpartnership

Although it might not be necessary to track all of the types of liabilities which are covered, with reference to the Code sections for the definitions and references to the time periods for relevant administrative and judicial actions, as done in the Form 872-I, we are concerned because the language on the executed Form 872 only references "partnership items" and does not include a reference to "affected items" although section 6229(a) separately states "or affected item" in a parenthetical following the reference to "partnership item". Accordingly, if there is sufficient time, we suggest securing a Form 872-I for the tax periods. However, agreements to extend the statute of limitations that only contain the language as stated in the above question will be defended, if necessary, since the language on such executed Forms 872 does follow the language contained in section 6229(b)(3).<sup>3</sup>

#### DISCUSSION

The Taxpayer Relief Act of 1997 (TRA'97) amended section 6231(a)(1)(B)(i) to provide that partnerships with C corporation partners could fall under the small partnership exception to the TEFRA unified audit procedures (partnerships with 10 or fewer partners fall into the small partnership exception). Prior to TRA'97, the small partnership exception only applied to partnerships consisting of natural persons or estates. The amendment applies to partnership tax years ending after August 5,

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items (see section 6231(b)). This agreement extends the period for filing a petition for adjustment under section 6228(b) but only if a timely request for administrative adjustment is filed under section 6227. For partnership items which have converted to nonpartnership items, this agreement extends the period for filing a suit for refund or credit under section 6532, but only if a timely claim for refund is filed for such items. In accordance with paragraph (1) above, an assessment attributable to a partnership shall not terminate this agreement for other partnerships or for items not attributable to a partnership. Similarly, an assessment not attributable to a partnership shall not terminate this agreement for items attributable to a partnership."

<sup>3</sup> I.R.C. § 6229(b)(3) provides:

Coordination with Section 6501(c)(4).--Any agreement under section 6501(c)(4) shall apply with respect to the period described in subsection (a) only if the agreement expressly provides that such agreement applies to tax attributable to partnership items. (emphasis added).

1997.

As a result of the amendment, certain partnerships with 10 or fewer partners that used to be covered under the TEFRA procedures are now under the small partnership exception and TEFRA will not apply to the years ending after August 5, 1997. However, many of these "new" small partnerships would prefer to be treated as TEFRA partnerships.

I.R.C. § 6231(a)(1)(B)(ii) provides that a partnership may elect to not be treated as a small partnership, in which case the unified audit procedures under TEFRA will apply. Once the election is made, it will apply for such year and for all subsequent taxable years unless revoked with the consent of the Internal Revenue Service.

On January 25, 1999, Temporary Regulations were published which, as interpretive regulations, provided the necessary procedures to follow in order to make the election allowed under I.R.C. § 6231(a)(1)(B)(ii). Specifically, Temp. Treas. Reg. 301.6231(a)(1)-1T(b)(2) provides as follows:

2) *Method of election.* A partnership shall make the election .... by attaching a statement to the partnership return for the first taxable year for which the election is to be effective. The statement shall be identified as an election under section 6231(a)(1)(B)(ii), shall be signed by all persons who were partners of that partnership at any time during the partnership taxable year to which the return relates, and shall be filed at the time (determined with regard to any extension of time for filing) and place prescribed for filing the partnership return. However, for partnership taxable years for which a partnership return is to be filed before 90 days after the date final regulations under this section are published in the Federal Register the partnership may file the statement described in the preceding sentence on or before the date which is one year before the date specified in section 6229(a) for the expiration of the period of limitations with respect to that partnership (determined with regard to extensions of that period under section 6229(b)).

The procedures established under the Temporary Regulations for making the election for tax periods for which a return has already been filed requires at least one year from the date specified in section 6229(a) for the expiration of the statute of limitations. The individual partners may extend this period even

though the partnership is not yet a TEFRA partnership because the election has not yet been made. The items do not have to in fact be "partnership items" before the individual partners can extend the statute. Since the tax will be imposed against the individual partners, and they have extended the statute of limitations for making assessments against them, it does not matter that the tax might not be attributable to "partnership items" as defined under TEFRA until after the consents are given and the election is made. The individual partners have the authority to act on their own behalf at the time the consents are given, and that is all that is relevant. The fact that they are referencing section 6229(a) before the partnership is in fact under TEFRA is not significant. (In contrast, a partnership can not extend the period under section 6229 until it is under the TEFRA provisions because it has no authority to act to extend any statutes until it is under TEFRA).

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views. Also, if you have any questions, please call Donna P. Leone at 412-644-3442.

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By: \_\_\_\_\_  
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